



The Comptroller General
of the United States

Washington, D.C. 20548

Murphy

Decision

Matter of: Telenet Communications Corporation

File: B-224561

Date: February 18, 1987

DIGEST

Protest of award of a contract for data transmission services to an offeror whose proposal was inconsistent on its face with material solicitation requirements is sustained because the offeror could not meet the mandatory grade of service or provide transmission as required by the solicitation and failed to include prices for all services in its proposal.

DECISION

Telenet Communications Corporation protests the award of a contract for data communications services to Tymnet, Inc. under request for proposals (RFP) No. KECI-86-009, issued by the General Services Administration (GSA). Telenet contends that the awardee's proposal failed to comply with mandatory technical requirements of the solicitation and omitted prices for a substantial amount of required services.

We sustain the protest.

The RFP, issued on June 19, 1986, was for nationwide data transmission services to support GSA's Federal Supply Service. Offerors were required to provide fixed-prices for a basic service with five annual option periods. The basic service involves connection of GSA's "TTY-compatible" terminals (terminals that communicate one character-at-a-time instead of whole screens) in 11 regional offices to the agency's host computer in Washington, D.C.

GSA plans to expand and upgrade its system, and it required offerors to include two optional services in their proposals. The first option is for data transmission of up to 9,600 characters per second to and from Honeywell "Datanet 8" computers. The RFP stated that for evaluation purposes, offerors should assume that four circuits would be installed

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in each of months 13, 25, and 37 of the contract, and that each circuit would carry 20 million characters per month. A second option stemmed from GSA's plan to begin replacing its basic TTY-compatible terminals with modern equipment, 3270 terminals that transmit a screen of data at a time. The 3270 terminals will use either of two different types of communications procedures or "protocols" known as SDLC (synchronous data link control) and BSC (binary synchronous communications). GSA included transmission services for these new terminals as the second option in the RFP. The agency's plan for this conversion, which will begin in 1988, is still being formulated, so GSA established certain assumptions for purposes of comparing proposals; these included an assumed schedule for implementation and an estimated annual percentage of terminals that will provide each type of communications procedure (SDLC and BSC).

The solicitation provided that award would be made to the responsive proposal with the lowest total discounted life cycle cost over a 5-year period for the basic service and all option periods and services. Four proposals were received by the August 25, 1986 closing date, including those of the protester and the incumbent contractor, Tymnet. All were found to be technically acceptable. GSA concluded that Tymnet offered the lowest price, and it awarded a contract to the firm on September 30. Following Telenet's protest on October 10, GSA authorized performance of the contract upon a finding under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(d)(2)(A)(i) (Supp. III 1985), that performance was in the best interest of the government.

MANDATORY SOLICITATION REQUIREMENTS

Telenet contends that Tymnet's proposed system to supply data transmission services for GSA's planned 3270 terminals cannot meet the mandatory specifications in the RFP. Specifically, the protester alleges that because Tymnet proposed to use one "cluster controller"^{1/} in each region, Tymnet cannot provide the grade of service mandated by the specifications. Telenet states that it was clearly prejudiced by the improper acceptance of Tymnet's offer, since Telenet's total cost was

^{1/} Cluster controllers primarily function to connect a number ("cluster") of terminals through a single entry point to a data transmission network, in contrast to direct access by each terminal.

second low and would have been the lowest had it use cluster controllers.

In negotiated procurements, any proposal that fails to conform to material terms and conditions of the solicitation should be considered unacceptable and may not form the basis for an award. AT&T Information Systems, Inc., B-2 Mar. 20, 1985, 85-1 CPD ¶ 326. It is fundamental that offerors for government contracts must compete on an equal basis. The Federal Acquisition Regulation (FAR) requires agencies to revise solicitations and give all offerors the opportunity to submit new or revised proposals if changes occur in requirements or if the proposal considered advantageous to the government involves a departure from stated requirements. 48 C.F.R. § 15.606 (1986). Failure to do otherwise would violate the requirement of CICA, 41 U.S.C. § 253b (Supp. III 1985), that award must be based on the factors specified in the solicitation.

The use of cluster controllers was specifically excluded from the solicitation. In amendment 0005, issued on August 1, 1985, GSA responded to a question regarding whether the terminals will be clustered or will require individual connections to the network (Question 13). GSA stated that "for evaluation purposes," offerors should assume that the agency will provide "separate dial-up" service for the 3270 terminals. In other words, each terminal must have the ability to connect to the data transmission system separately.

GSA's response to this issue in the administrative protest was simply to assert that its technical evaluation team determined that Tymnet's proposal satisfied the RFP requirements. Following a conference on the protest, GSA stated that Tymnet was not providing the cluster controllers that they were being furnished by GSA. Tymnet's protest does state that it is using "government-furnished cluster controllers." However, there is no evidence in the protest that cluster controllers will be furnished by GSA, and, if GSA supplies them, cluster controllers simply do not provide "separate dial-up" access for each terminal.

Additionally, it is not clear that Tymnet's proposal would provide the grade of service required by the RFP. Paragraph C.16 of the RFP states as a "mandatory" requirement that the data communications networks provide a grade of service for terminal users of P.O.1 or better, i.e., the probability of a terminal user receiving a "busy signal" when attempting to connect to the network will not exceed 1 percent. As discussed above, Paragraph C.18.1 provides

GSA's 3270 terminals are expected to use SDLC and BSC protocols--the distribution will be 70 percent SDLC and 30 percent BSC during 1989, 80 percent SDLC and 20 percent BSC in 1990, and 90 percent SDLC and 10 percent BSC in 1991. The RFP does not suggest that the terminals be segregated by office, and based on the across-the-board percentages of projected protocol use, offerors could reasonably assume that some if not all of the offices will have terminals using both protocols.

Terminals with SDLC protocol require controllers with the same communications procedures, i.e., the SDLC protocol. Similarly, BSC terminals require controllers with the BSC protocol. For this reason, the use of a single cluster controller for each of 11 regional offices would mean that at all times a number of the terminals could not be used. Without two different controllers for the SDLC terminals and the BSC terminals, all of GSA's terminals will not have access to the data transmission system.

GSA asserts that it does not require simultaneous implementation of the two 3270 terminal protocols, so that Tymnet can meet the required grade of service with a single cluster controller in each regional office. This would presumably require a schedule for alternately using terminals and some means of changing the communication procedures for the controllers each time. Irrespective of whether this is possible, much less practical, the grade of service and separate access requirements of the RFP contradict GSA's assertion.

Paragraph L.2.3 of the RFP states explicitly that proposals failing to meet mandatory specifications and optional requirements listed in paragraph C.16 and C.18 are unacceptable. Tymnet's proposal is inconsistent on its face with those material requirements and should not have been accepted by GSA.

DATANET 8 PRICING

Telenet protests that Tymnet failed to include prices for the optional Datanet 8 transmission services. As discussed above, GSA plans to initiate service for Datanet 8 computers in 1988 and stated in the RFP that, for evaluation purposes, offerors should assume service in specified stages, and should assume that each will generate traffic of 20 million characters per month. The RFP required that offerors include all costs pertinent to required services in their proposals.

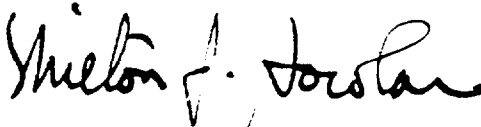
GSA argues that the data to enter the communications system through its Datanet 8 terminals is the same data that the RFP stated would enter through its TTY-compatible terminals and replacement 3270 terminals. GSA states that the RFP could be confusing on this issue, but that the 20 million characters per month for each Datanet 8 circuit will not be in addition to other data and should not have been separately priced.

We find that GSA's reading of the solicitation is unreasonable. If the data transmitted through the Datanet 8 terminals were irrelevant to the offerors' prices, there was no reason to state the assumed volume of traffic for evaluation purposes. There is no evidence in the RFP that the Datanet 8 terminals are to be used as a substitute for GSA's basic terminals--the 3270 terminals, not the Datanet 8 terminals, are intended to replace GSA's current equipment. If GSA did not anticipate additional traffic with the installation of Datanet 8 terminals, it should have deleted charges for this traffic from Telenet's proposal so that the offerors could be evaluated on the same basis. We sustain this ground of Telenet's protest.

Based upon GSA's evaluation documents, we find that of those proposals meeting the mandatory requirements of the solicitation, Telenet's offered the lowest life cycle cost, whether or not additional traffic for Datanet 8 circuits is anticipated. It is apparent that GSA may not have finalized its future requirements for 3270 terminals, e.g., how many and in what location the terminals will be required. The RFP established certain assumptions as a basis for comparing proposals, including separate access for all terminals to the network, and we have no reason to believe that those assumptions do not provide a sound basis for selecting a contractor to meet the agency's actual needs insofar as they are currently established.

In view of the major revisions that would be required in Tymnet's proposal for it to comply with the RFP, and the fact that the offerors' prices have been publicly exposed, we do not believe that reopening the procurement, conducting discussions, and evaluating additional proposals would be an appropriate remedy. Consequently, we are recommending to the Administrator of General Services that the contract with Tymnet be terminated and reawarded to Telenet.

The protest is sustained.

for 
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